

§ 7.2024

(2) Reduce costs associated with shareholder communications and meetings.

[64 FR 60099, Nov. 4, 1999]

§ 7.2024 Staggered terms for national bank directors and size of bank board.

(a) *Staggered terms.* Any national bank may adopt bylaws that provide for staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.

(b) *Maximum term.* Any national bank director may hold office for a term that does not exceed three years.

(c) *Number of directors.* A national bank's board of directors shall consist of no fewer than 5 and no more than 25 members. A national bank may, after notice to the OCC, increase the size of its board of directors above the 25 member limit. A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors. The bank's notice shall specify the reason(s) for the increase in the size of the board of directors beyond the statutory limit.

[68 FR 70131, Dec. 17, 2003]

Subpart C—Bank Operations

§ 7.3000 Bank hours and closings.

(a) *Bank hours.* A national bank's board of directors should review its banking hours, and, independently of any other bank, take appropriate action to establish a schedule of banking hours.

(b) *Emergency closings.* Pursuant to 12 U.S.C. 95(b)(1), the Comptroller of the Currency (Comptroller), a state, or a legally authorized state official may declare a day a legal holiday if emergency conditions exist. That day is a legal holiday for national banks or their offices in the affected geographic area (*i.e.*, throughout the country, in a state, or in part of a state). Emergency conditions include natural disasters and civil and municipal emergencies (*e.g.*, severe flooding, or a power emergency declared by a local power company or government requesting that businesses in the affected area close).

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The Comptroller issues a proclamation authorizing the emergency closing in accordance with 12 U.S.C. 95 at the time of the emergency condition, or soon thereafter. When the Comptroller, a State, or a legally authorized State official declares a legal holiday due to emergency conditions, a national bank may temporarily limit or suspend operations at its affected offices. Alternatively, the national bank may continue its operations unless the Comptroller by written order directs otherwise.

(c) *Ceremonial closings.* A state or a legally authorized state official may declare a day a legal holiday for ceremonial reasons. When a state or a legally authorized state official declares a day to be a legal holiday for ceremonial reasons, a national bank may choose to remain open or to close.

(d) *Liability.* A national bank should assure that all liabilities or other obligations under the applicable law due to the bank's closing are satisfied.

[61 FR 4862, Feb. 9, 1996, as amended at 66 FR 34791, July 2, 2001]

§ 7.3001 Sharing space and employees.

(a) *Sharing space.* A national bank may:

(1) Lease excess space on bank premises to one or more other businesses (including other banks and financial institutions);

(2) Share space jointly held with one or more other businesses; or

(3) Offer its services in space owned or leased to other businesses.

(b) *Sharing employees.* When sharing space with other businesses as described in paragraph (a) of this section, a national bank may provide, under one or more written agreements among the bank, the other businesses, and their employees, that:

(1) A bank employee may act as agent for the other business; or

(2) An employee of the other business may act as agent for the bank.

(c) *Supervisory conditions.* When a national bank engages in arrangements of the types listed in paragraphs (a) and (b) of this section, the bank shall ensure that:

(1) The other business is conspicuously, accurately, and separately identified;

(2) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the bank and of the other businesses so that customers will know the identity of the bank or business that is providing the product or service;

(3) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;

(4) All aspects of the relationship between the bank and the other business are conducted at arm's length, unless a special arrangement is warranted because the other business is a subsidiary of the bank;

(5) Security issues arising from the activities of the other business on the premises are addressed;

(6) The activities of the other business do not adversely affect the safety and soundness of the bank;

(7) The shared employees or the entity for which they perform services are duly licensed or meet qualification requirements of applicable statutes and regulations pertaining to agents or employees of such other business; and

(8) The assets and records of the parties are segregated.

(d) *Other legal requirements.* When entering into arrangements, of the types described in paragraphs (a) and (b) of this section, and in conducting operations pursuant to those arrangements the bank must ensure that each arrangement complies with 12 U.S.C. 29 and 36 and with any other applicable laws and regulations. If the arrangement involves an affiliate or a shareholder, director, officer or employee of the bank:

(1) The bank must ensure compliance with all applicable statutory and regulatory provisions governing bank transactions with these persons or entities;

(2) The parties must comply with all applicable fiduciary duties; and

(3) The parties, if they are in competition with each other, must consider limitations, if any, imposed by applicable antitrust laws.

Subpart D—Preemption

§ 7.4000 Visitorial powers.

(a) *General rule.* (1) Under 12 U.S.C. 484, only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks. State officials may not exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records of national banks, or prosecuting enforcement actions, except in limited circumstances authorized by federal law. However, production of a bank's records (other than non-public OCC information under 12 CFR part 4, subpart C) may be required under normal judicial procedures.

(2) For purposes of this section, visitorial powers include:

(i) Examination of a bank;

(ii) Inspection of a bank's books and records;

(iii) Regulation and supervision of activities authorized or permitted pursuant to federal banking law; and

(iv) Enforcing compliance with any applicable Federal or state laws concerning those activities, including through investigations that seek to ascertain compliance through production of non-public information by the bank, except as otherwise provided in paragraphs (a), (b), and (c) of this section.

(3) Unless otherwise provided by Federal law, the OCC has exclusive visitorial authority with respect to the content and conduct of activities authorized for national banks under Federal law.

(b) *Exclusion.* In accordance with the decision of the Supreme Court in *Cuomo v. Clearing House Assn., L. L. C.*, 129 S. Ct. 2710 (2009), an action against a national bank in a court of appropriate jurisdiction brought by a state attorney general (or other chief law enforcement officer) to enforce an applicable law against a national bank and to seek relief as authorized by such law is not an exercise of visitorial powers under 12 U.S.C. 484.

(c) *Exceptions to the general rule.* Under 12 U.S.C. 484, the OCC's exclusive visitorial powers are subject to the following exceptions: